



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0879/4

PJK:jld:rs

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DOA:.....Blaine, BB0258 - Allow DHFS to recover incorrect payments under MA and BadgerCare based on failure to report nonfinancial information

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

D-note

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1 AN ACT *relating to:* the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, DHFS administers the Medical Assistance (MA) program and the Badger Care (BadgerCare) health care program. Generally, under MA DHFS pays for health care services provided to eligible low-income persons, and under BadgerCare DHFS pays for health care services provided to certain low-income children who do not reside with a parent and to certain low-income families. Current law provides that DHFS may recover incorrect payments that were made for health care services under MA that resulted from a misstatement or omission of fact by a person supplying information in an application for benefits or from the failure of a person to report the receipt of income or assets in an amount that would have affected a recipient's eligibility for benefits.

This bill adds that DHFS may also recover incorrect payments made for health care services under MA that result from the failure of a person to report changes in a recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or his or her cost-sharing requirements, and provides that DHFS may recover incorrect payments made for

health care services under BadgerCare resulting from any of the same reasons for which DHFS may recover incorrect payments made under MA.

The bill also provides that, if an MA or BadgerCare recipient to or for whom an incorrect payment was made fails, after notice, to repay the incorrect amount, DHFS may bring an action to enforce repayment or may issue an order to compel repayment. The recipient has 30 days to appeal the order, but if he or she does not pay the amount due under the order and does not appeal the order within 30 days, DHFS may present a certified copy of the order to the circuit court. The circuit court must render a judgment in accordance with the order without further notice to the recipient. The judgment may be enforced in the same manner as any other judgment rendered by a court. In addition, DHFS must certify the obligation to DOR for collection as a setoff against any state income tax refund that is due the recipient. This procedure for obtaining a judgment for the amount of an incorrect payment and for collecting the amount as a tax refund setoff is similar to the procedure in current law for obtaining a judgment for, and collecting, amounts owed to DHFS for various types of care, maintenance, and services that DHFS is required to provide, such as to persons committed to inpatient treatment facilities, to persons criminally committed to mental health institutions, to juveniles taken into custody for emergency detention, and to persons protectively placed or receiving protective services.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (4) (L) of the statutes is amended to read:

2 20.435 (4) (L) *Medical assistance* Assistance and food stamp fraud and error
3 *reduction*. All moneys received as the state's share of the recovery of overpayments
4 and incorrect payments under ss. 49.497 (1) and (1m) and 49.793 (2) and all moneys
5 received from counties and tribal governing bodies as a result of any error reduction
6 activities in the ~~medical assistance~~ Medical Assistance and food stamp programs
7 under ss. 49.45 (2) (a) 3m., 49.197, and 49.79 (9), for contracts under s. 49.197 (5), for
8 any activities to reduce error and fraud under ss. 49.45 (2) (a) 3m. and 49.79 (9), to
9 pay federal sanctions under the food stamp program, and for food stamp

1 reinvestment activities under reinvestment agreements with the federal
2 department of agriculture that are designed to improve the food stamp program.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

3 SECTION 2. 49.497 (title) of the statutes is amended to read:

4 49.497 (title) **Recovery of incorrect ~~medical assistance~~ Medical**
5 **Assistance or Badger Care payments.**

6 SECTION 3. 49.497 (1) of the statutes is renumbered 49.497 (1) (a) (intro.) and
7 amended to read:

8 49.497 (1) (a) (intro.) The department may recover any payment made
9 incorrectly for benefits ~~specified under s. 49.46, 49.468 or 49.47~~ provided under this
10 subchapter or s. 49.665 if the incorrect payment results from any of the following:

11 1. A misstatement or omission of fact by a person supplying information in an
12 application for benefits under s. 49.46, 49.468 or 49.47 this subchapter or s. 49.665.

13 2. ~~The department may also recover if a medical assistance~~ failure of a Medical
14 Assistance or Badger Care recipient or any other person responsible for giving
15 information on the recipient's behalf fails to report the receipt of income or assets in
16 an amount that would have affected the recipient's eligibility for benefits.

17 (b) The department's right of recovery is against any ~~medical assistance~~
18 Medical Assistance or Badger Care recipient to whom or on whose behalf the
19 incorrect payment was made. The extent of recovery is limited to the amount of the
20 benefits incorrectly granted. The county department under s. 46.215 or 46.22 or the
21 governing body of a federally recognized American Indian tribe administering
22 ~~medical assistance~~ Medical Assistance or Badger Care shall begin recovery actions
23 on behalf of the department according to rules promulgated by the department.

1 **SECTION 4.** 49.497 (1) (a) 3. of the statutes is created to read:

2 49.497 (1) (a) 3. The failure of a Medical Assistance or Badger Care recipient
3 or any other person responsible for giving information on the recipient's behalf to
4 report any change in the recipient's financial or nonfinancial situation or eligibility
5 characteristics that would have affected the recipient's eligibility for benefits or the
6 recipient's cost-sharing requirements.

7 **SECTION 5.** 49.497 (1m) of the statutes is created to read:

8 49.497 (1m) (a) If, after notice that an incorrect payment was made, a recipient,
9 or parent of a minor recipient, who is liable for repayment of an incorrect payment
10 fails to repay the incorrect payment or enter into, or comply with, an agreement for
11 repayment, the department may bring an action to enforce the liability or may issue
12 an order to compel payment of the liability. Any person aggrieved by an order issued
13 by the department under this paragraph may appeal the order as a contested case
14 under ch. 227 by filing with the department a request for a hearing within 30 days
15 after the date of the order. The only issue at hearing shall be the determination by
16 the department that the person has not repaid the incorrect payment or entered into,
17 or complied with, an agreement for repayment.

18 (b) If any recipient, or parent of a minor recipient, named in an order to compel
19 payment issued under par. (a) fails to pay the department any amount due under the
20 terms of the order and no contested case to review the order is pending and the time
21 for filing for a contested case review has expired, the department may present a
22 certified copy of the order to the circuit court for any county. The sworn statement
23 of the secretary shall be evidence of the incorrect payment. The circuit court shall,
24 without notice, render judgment in accordance with the order. A judgment rendered
25 under this paragraph shall have the same effect and shall be entered in the judgment

1 and lien docket and may be enforced in the same manner as if the judgment had been
2 rendered in an action tried and determined by the circuit court.

3 (c) The recovery procedure under this subsection is in addition to any other
4 recovery procedure authorized by law.

5 **SECTION 6.** 49.497 (2) of the statutes is amended to read:

6 49.497 (2) A county or governing body of a federally recognized American
7 Indian tribe may retain 15% of benefits ~~distributed under s. 49.46, 49.468 or 49.47~~
8 provided under this subchapter or s. 49.665 that are recovered under ~~sub. (1) this~~
9 section due to the efforts of an employee or officer of the county or tribe.

10 **SECTION 7.** 49.497 (4) of the statutes is created to read:

11 49.497 (4) The department may appear for the state in any and all collection
12 matters under this section, and may commence suit in the name of the department
13 to recover an incorrect payment from the recipient to whom or on whose behalf it was
14 made.

15 **SECTION 8.** 49.497 (5) of the statutes is created to read:

16 49.497 (5) The department may make an agreement with a recipient, or parent
17 of a minor recipient, who is liable under sub. (1), providing for repayment of an
18 incorrect payment at a specified rate or amount.

19 **SECTION 9.** 49.85 (2) (a) of the statutes is renumbered 49.85 (2) (a) (intro.) and
20 amended to read:

21 49.85 (2) (a) (intro.) At least annually, the department of health and family
22 services shall certify to the department of revenue the amounts that, based on the
23 notifications received under sub. (1) and on other information received by the
24 department of health and family services, the department of health and family
25 services has determined that it may recover under s. 49.45 (2) (a) 10. ~~or 49.497~~, except

49.793, or 49.847

1 that the department of health and family services may not certify an amount under
2 this subsection unless it all of the following apply:

3 1. The department has met the notice requirements under sub. (3) ~~and unless~~
4 ~~its.~~

5 2. The department's determination has either not been appealed or is no longer
6 under appeal.

7 **SECTION 10.** 49.85 (2) (a) 3. of the statutes is created to read:

8 49.85 (2) (a) 3. If the determination relates to recovery of an amount under s.
9 49.497, the determination was rendered to a judgment under s. 49.497 (1m) (b).

10 **SECTION 9321. Initial applicability; health and family services.**

11 (1) RECOVERY OF INCORRECT PAYMENTS UNDER MEDICAL ASSISTANCE AND
12 BADGERCARE.

13 (a) *Incorrect payments.* The treatment of sections 49.497 (title) and (2) of the
14 statutes, the renumbering and amendment of section 49.497 (1) of the statutes, and
15 the creation of section 49.497 (1) (a) 3. of the statutes first apply to incorrect
16 payments made on the effective date of this paragraph.

17 (b) *Recovery procedure.* The treatment of sections 20.435 (4) (L) and 49.497
18 (1m), (4), and (5) of the statutes, the renumbering and amendment of section 49.85
19 (2) (a) of the statutes, and the creation of section 49.85 (2) (a) 3. of the statutes first
20 apply to incorrect payment recoveries that are commenced on the effective date of
21 this paragraph, regardless of when the incorrect payments were made.

22 (END)

D-note

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0879/4ins
PJK:jld:rs

INSERT 6-9

****NOTE: This is reconciled s. 49.85 (2). This SECTION has been affected by drafts
with the following LRB numbers: LRB-0265 and LRB-0879.

(END OF INSERT 6-9)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/4dn
PJK:jld:rs

Robert Blaine and Steve Milioto:

This draft reconciles LRB-0265 and LRB-0879 (with respect to ss. 20.435 (4) (L) and 49.85 (2) (a)). Both of these drafts should continue to appear in the compiled bill.

Note that under s. 49.85 (2) (a) 3.,[✓] only amounts that may be recovered under s. 49.497[✓] must be rendered to a judgment. Let me know if this is not okay.

Note that I let the initial applicability for ss. 20.435 (4) (L) and 49.85 (2) (a) (*Recovery procedure*) apply to the *reconciled* sections, which include the treatment of both drafts. Let me know if this is not okay.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0879/4dn
PJK:jld:rs

January 26, 2005

Robert Blaine and Steve Milioto:

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7 incorrectly for benefits specified under s. 49.46, 49.468 or 49.47 provided under this
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25 under ch. 227 by filing with the department a request for a hearing within 30 days

1 after the date of the order. The only issue at hearing shall be the determination by
2 the department that the person has not repaid the incorrect payment or entered into,
3 or complied with, an agreement for repayment.

4 (b) If any recipient, or parent of a minor recipient, named in an order to compel
5 payment issued under par. (a) fails to pay the department any amount due under the
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7 for filing for a contested case review has expired, the department may present a
8 certified copy of the order to the circuit court for any county. The sworn statement
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11 under this paragraph shall have the same effect and shall be entered in the judgment
12 and lien docket and may be enforced in the same manner as if the judgment had been
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15 recovery procedure authorized by law.

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9 notifications received under sub. (1) and on other information received by the
10 department of health and family services, the department of health and family
11 services has determined that it may recover under s. 49.45 (2) (a) 10. ~~or~~, 49.497,
12 49.793, or 49.847, except that the department of health and family services may not
13 certify an amount under this subsection unless it all of the following apply:

14 1. The department has met the notice requirements under sub. (3) ~~and unless~~
15 ~~its~~.

16 2. The department's determination has either not been appealed or is no longer
17 under appeal.

18 **SECTION 9.** 49.85 (2) (a) 3. of the statutes is created to read:

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 ****NOTE: This is reconciled s. 49.85 (2). This SECTION has been affected by drafts
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23 BADGERCARE.

(a) *Incorrect payments.* The treatment of sections 49.497 (title) and (2) of the statutes, the renumbering and amendment of section 49.497 (1) of the statutes, and the creation of section 49.497 (1) (a) 3. of the statutes first apply to incorrect payments made on the effective date of this paragraph.

(b) *Recovery procedure.* The treatment of sections 20.435 (4) (L) and 49.497 (1m), (4), and (5) of the statutes, the renumbering and amendment of section 49.85 (2) (a) of the statutes, and the creation of section 49.85 (2) (a) 3. of the statutes first apply to incorrect payment recoveries that are commenced on the effective date of this paragraph, regardless of when the incorrect payments were made.

(END)